TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1959

No. 556 14

UNITED STATES, APPELLANT,

vs.

LUCILLE ALDINE DEGE, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

FILED DECEMBER 4, 1958
PROBABLE JURISDICTION NOTED JANUARY 26, 1959

Supreme Court of the United States

OCTOBER TERM, 1958

No. 556

UNITED STATES, APPELLANT,

vs.

LUCILLE ALDINE DEGE, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

INDEX

	Original	Print
Record from the U.S.D.C. for the Southern District of California, Southern Division		
Docket entries	2	1
Indictment	3	2
Motion to dismiss indictment	6	5
Order dismissing indictment	10	6
Notice of appeal	12	7
Clerk's certificate (omitted in printing)	15	8
Order noting probable jurisdiction	16	8

[fol. 2] IN UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

27809

THE UNITED STATES

vs.

LUCILLE ALDINE DEGE, ERNEST DEGE

18-371 Conspiracy 1 Ct.

DOCKET ENTRIES

8/21/58 Ent ord and fld Indict. O/R both defts. Md JS-2

8/25/58 Ent procs arr T/N each deft. T. Whelan atty. Ent plea N/G both defts. Ent ord contd to 9/8/58 10AM for hrg mots to be fld by deft by 8/28/58 & for settg. Fld waiver of defts presence (W)

9/2/58 Fld mot defts to dism indictment. Fld pts & auths in support of mot of defts.

9/5/58 Fld oppos pltf to mot to dism.

9/8/58 Ent proc hrg mot of ea deft to dismiss indict. Ent ord granted said motion. Ent ord atty for deft prepare and submit to court. (JC)

9/9/58 Fld Ord (TC) dismissing Indictment. Ent 9/12/58. Md JS-3 (JC)

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 3] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

July, 1958, Grand Jury—Southern Division

No. 27809

(U.S.C., Title 18, Sec. 371—Conspiracy)

UNITED STATES OF AMERICA, Plaintiff,

vs.

LUCILLE ALDINE DEGE and ERNEST DEGE, Defendants.

INDICTMENT—filed August 21, 1958

The Grand Jury charges:

Commencing in or around October, 1957, and continuing up to and including March, 1958, in San Diego, California, in the Southern Division of the Southern District of California, defendants LUCILLE ALDINE DEGE and her husband, ERNEST DEGE, did wilfully and unlawfully conspire and agree to commit offenses against the United States of America, in violation of United States Code, Title 18, Sections 371 and 545, in that defendants LUCILLE ALDINE DEGE and her husband, ERNEST DEGE, did conspire and agree together and with each other as follows:

1. The defendants LUCILLE ALDINE DEGE and her husband, ERNEST DEGE, would knowingly and wilfully with intent to defraud the United States, smuggle and clandestinely introduce into the United States merchandise, to-wit, various and sundry kinds of psittacine birds from a foreign country; namely, the Republic of Mexico, which merchandise should have been invoiced.

[fol. 4] 2. The defendants LUCILLE ALDINE DEGE and her husband, ERNEST DEGE, would knowingly and fraudulently import and bring into the United States from a foreign country; namely, Mexico, said merchandise con-

trary to United States Code, Title 19, Chapter 4, and particularly Sections 1461 and 1484 thereof.

3. The defendants LUCILLE ALDINE DEGE and her husband, ERNEST DEGE, would knowingly and wilfully receive, conceal, sell and facilitate the transportation and concealment of said merchandise, which said merchandise was unlawfully imported and brought into the United States, contrary to United States Code, Title 19, Chapter 4, and particularly, Sections 1461 and 1484 thereof, knowing said merchandise would be and was so imported and so brought into the United States.

Pursuant to said conspiracy and to effect the objects thereof, the defendants LUCILLE ALDINE DEGE and her husband, ERNEST DEGE, did commit diverse overt acts in San Diego County within the Southern Division of the Southern District of California, and other places to the Grand Jury unknown, among which are the following:

1. On or about October 15, 1957, defendants LUCILLE ALDINE DEGE and her husband, ERNEST DEGE, drove from San Diego County, California, to Tijuana, Baja California, Mexico.

2. On or about October 15, 1957, defendant LUCILLE ALDINE DEGE received a number of psittacine birds in San Diego County, California.

3. On or about October 15, 1957, defendant LUCILLE ALDINE DEGE transported a number of psittacine birds from San Diego County to Los Angeles County, California.

4. On or about December 27, 1957, defendants LUCILLE ALDINE DEGE and her husband, ERNEST DEGE, drove from San Diego County, California, to Tijuana, Baja California, Mexico.

5. On or about December 27, 1957, defendant LUCILLE ALDINE DEGE received and transported a number of psittacine birds in San Diego County, California.

[fol. 5] 6. On or about January 15, 1958, defendants LUCILLE ALDINE DEGE and her husband, ERNEST DEGE, drove from San Diego County to Tijuana, Baja California, California.

7. On or about January 15, 1958, defendant LUCILLE ALDINE DEGE received and transported a number of psittacine birds in San Diego County.

8. On or about March 7, 1958, defendant ERNEST DEGE drove from San Diego County to Tijuana, Baja California, Mexico.

9. On or about March 7, 1958, defendants LUCILLE ALDINE DEGE and her husband, ERNEST DEGE, drove from Tecate, Baja California, Mexico to San Diego County, California.

10. On or about March 7, 1958, defendant LUCILLE ALDINE DEGE received and transported approximately 389 psittacine birds in San Diego County, California.

A TRUE BILL

/s/ FRANK W. HEILMAN
Foreman

/s/ LAUGHLIN E. WATERS
Laughlin E. Waters
United States Attorney

[fol. 6] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

July, 1958, Grand Jury—Southern Division

No. 27809

UNITED STATES OF AMERICA, Plaintiff,

vs.

LUCILLE ALDINE DEGE and ERNEST DEGE, Defendants.

MOTION TO DISMISS INDICTMENT—filed September 2, 1958

The defendant LUCILLE ALDINE DEGE and the defendant ERNEST DEGE, severally and jointly, and each defendant above-named individually moves that the Indictment in the above-entitled action be dismissed on the following grounds and for the following reasons:

I

That said Indictment does not state facts sufficient to constitute a cause of action against these defendants or either of them.

II

That said Indictment does not state a public offense against the United States.

DATED this 28th day of August, 1958.

/s/ THOMAS WHELAN
Thomas Whelan,
Attorney for Defendant
LUCILLE ALDINE DEGE
and Defendant
ERNEST DEGE

Acknowledgment of service (omitted in printing).

[fols. 7, 8, 9] • • •

[fol. 10] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

July, 1958, Grand Jury—Southern Division

No. 27809 - CR - SD

UNITED STATES OF AMERICA, Plaintiff,

vs.

LUCILLE ALDINE DEGE and ERNEST DEGE, Defendants.

ORDER DISMISSING INDICTMENT—September 8, 1958

In the above-entitled action the motion of LUCILLE ALDINE DEGE and the motion of ERNEST DEGE, defendants therein, that the Indictment be dismissed on the following grounds and for the following reasons:

That said Indictment does not state facts sufficient to constitute a cause of action against these defendants or either of them;

That said Indictment does not state a public offense against the United States;

came on regularly to be heard on Monday, September 8th, 1958, at 10:00 o'clock A.M., in the above-entitled Court in Courtroom Two, located at the Federal Building at 325 West "F" Street, San Diego, California, the Honorable James Carter, a Judge of the above-entitled Court presiding, the United States of America, plaintiff, being represented by Peter J. Hughes, Assistant United States Attorney, and the defendants Lucille Aldine Dege and Ernest Dege, being represented by their attorneys of rec-

[fol. 11] ord with Thomas Whelan appearing, and said Motions of said defendants having been presented, and the same being submitted to the Court for decision and the Court being fully advised in the premises:

IT IS HEREBY ORDERED on the authority of *Dawson vs United States*, 10 Fed 2d, 106, and *Gros vs United*

States, 138 Fed 2d, 261, that the motion of each defendant is granted, and the Indictment against the defendants is dismissed as to each defendant.

DONE IN OPEN COURT this 8th day of September, 1958.

/s/ JAMES M. CARTER
Judge of the United States
District Court

Approved as to form
Peter J. Hughes
Assistant U.S. Attorney

[fol. 12] (File Endorsement Omitted)

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 27809 Criminal

UNITED STATES OF AMERICA, Plaintiff

v.

LUCILLE ALDINE DEGE and ERNEST DEGE, Defendants

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—filed October 7, 1958

I. Notice is hereby given that the United States appeals to the Supreme Court of the United States from the order of September 8, 1957, dismissing the indictment which charged defendants with a conspiracy in violation of 18 U.S.C. 371.

The appeal is taken pursuant to 18 U.S.C. 3731.

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the

Supreme Court of the United States and include in said transcript the following:

1. Transcript of docket entries.
2. Indictment.
3. Motion to dismiss the indictment.
4. Order of September 8, 1958 dismissing the indictment.
5. This notice of appeal.

[fol. 13] III The following question is presented by this appeal:

Whether 18 U.S.C. 371, punishing conspiracy of two or more persons to commit an offense against the United States covers a conspiracy between husband and wife.

/s/ LAUGHLIN E. WATERS
Laughlin E. Waters
United States Attorney
Southern District of California

[fol. 14] • • •

[fol. 15] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 16]

SUPREME COURT OF THE UNITED STATES

No. 556—October Term, 1958

UNITED STATES, Appellant,

vs.

LUCILLE ALDINE DEGE ET AL.

APPEAL from the United States District Court for the Southern District of California.

ORDER NOTING PROBABLE JURISDICTION—January 26, 1959

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

☆ U. S. GOVERNMENT PRINTING OFFICE, 1959 499042 1150